IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1504 of 2007
To
FIRST APPEAL No. 1517 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SPL. LAND ACQ. OFFICER & 1 - Appellants
Versus
JALUBHAI VIRSANGBHAI - Respondent

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Appearance :
MR KD PANDYA, AGP, for Appellants
MR AJ PATEL for respondent/claimant

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL
and
HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 16/03/2007

ORAL COMMON JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

Admitted. Mr. A.J.Patel, learned Counsel, waives service of notice on behalf of the claimant/s in each appeal. Having regard to the facts of the case, the appeals are taken up for final disposal today.

2. What is challenged in these appeals filed under Section 54 of the Land Acquisition Act, 1894 ["the Act" for short] read with Section 96 of the Code of Civil Procedure, 1908, is the legality of common judgment and award dated May 6, 2006 rendered by the learned 4th Additional Senior Civil Judge, Ahmedabad (R) at Navrangpura, in Land Acquisition Case Nos.295 to 307 of 1996 and 560 of 1998, by which the claimants have been awarded additional amount of compensation at the rate of Rs. 22/- per sq.mt. for their acquired lands over and above the compensation awarded to them by the Special Land Acquisition Officer at the rate of Rs. 1.27 ps. per sq.mt. by his award dated March 31, 1995.

3. The Executive Engineer, Narmada Yojana, Division No.3/5, Dholka, made a proposal to the State Government to acquire agricultural lands of village Valthera, Taluka : Dholka, District : Ahmedabad for the public purpose of construction of canal under the Narmada Project. On perusal of the said proposal, the State Government was satisfied that the lands of village Valthera mentioned therein were likely to be needed for the said public purpose. Therefore, a notification under Section 4(1) of the Act was issued, which was published in the official gazette on April 21, 1993. After taking into consideration the objections filed by the owners of the lands, report under Section 5A(2) of the Act was forwarded by the Special Land Acquisition Officer to the State Government. On the basis of the said report, a declaration under Section 6 of the Act was made, which was published in the official gazette on February 9, 1994. The interested persons were thereafter served with notices for determination of compensation payable

to them. The claimants appeared before the Special Land Acquisition Officer and claimed compensation at the rate of Rs.50/- per sq.mt. Having regard to the material placed before him, the Special Land Acquisition Officer by his award dated March 31, 1995 offered compensation to them at the rate of Rs.1.27 ps. per sq.mt. The claimants were of the opinion that the offer of compensation made by the Special Land Acquisition Officer was totally inadequate. Therefore, they submitted applications under Section 18 of the Act requiring the Special Land Acquisition Officer to refer their cases to the Court for the purpose of determining just amount of compensation payable to them. Accordingly, references were made to the District Court, Ahmedabad (Rural), where they were numbered as Land Acquisition Case Nos.295 to 307 of 1996 and 560 of 1998.

4. On behalf of the claimants, witness Abhesang Kambhai Parmar was examined at Exh.36. The

witness claimed that the lands acquired were highly fertile and that the lands were being irrigated with water which was available from the bores dug on the lands. According to the said witness, each claimant was raising different crops in two seasons viz. winter and monsoon. The witness claimed that the claimants were able to raise crops of cotton, millet, raida, grams, juvar, til, cumin-seeds, wheat etc. and were earning Rs. 35,000/- to Rs. 40,000/- per Bigha per year from the sale of agricultural produces. In support of his claim that the lands were fertile and that the claimants were raising different crops thereon, the witness produced 7/12 Extract relating to the lands acquired at Exhs.18 to 33. After mentioning that his village was fully developed, the witness stated that the lands of adjoining village Kariyana were acquired for the same purpose, for which the Reference Court had awarded compensation to the claimants at the rate of Rs.21.25 ps. per sq.mt. and, therefore, on the basis of the said previous

award, the claimants should be awarded enhanced compensation. A copy of the award passed by the Reference Court in Land Acquisition Case Nos.1750 to 1767 of 1996 relating to the lands of village Kariyana was produced at Exh.34. The witness also claimed that the lands from adjoining village Koth were also acquired for the same purpose, for which the Reference Court had awarded compensation to the claimants at the rate of Rs.24.70 ps. per sq.mt. and, therefore, on the basis of that previous award also the claimants should be awarded enhanced compensation. A copy of the award rendered by the Reference Court in Land Acquisition Case Nos.491 to 514 of 1998 relating to the lands of village Koth was produced by him at Exh.35. The witness further stated that the boundaries of his village were adjoining to village Kariyana and village Koth, and that the fertility of the lands acquired was similar to that of the lands of village Kariyana and village Koth, which were acquired earlier.

Though this witness was cross-examined by the learned Counsel for the acquiring authorities, nothing substantial could be elicited nor the assertion made by him that the lands acquired from village Kariyana and village Koth were similar to the lands acquired in the instant case could be demonstrated to be untrue.

5. On behalf of the acquiring authorities, witness Shashikantbhai Chhaganbhai Prajapati, who was then Deputy Executive Engineer, Sardar Sarovar Nigam, was examined at Exh.53. This witness claimed that the Special Land Acquisition Officer had taken into consideration all the relevant factors before determining the market value of the lands acquired and, therefore, the claimants were not entitled to enhanced compensation. However, in his cross-examination, he admitted that he had no personal knowledge regarding the proceedings, which were initiated for acquiring the lands in question. The witness also admitted that the boundaries of village Koth

were adjoining to village Valthera from which the lands were acquired in the instant case. It was also admitted by him that the boundaries of village Kariyana were touching the boundaries of village Valthera from which the lands were acquired in the instant case.

6. On appreciation of evidence adduced by the parties, the Reference Court was of the opinion that the previous award of the Reference Court relating to the lands of village Koth was a relevant piece of evidence for the purpose of determining the market value of the lands acquired in the instant case. Placing reliance on the said award, the Reference Court has awarded additional amount of compensation to the claimants at the rate of Rs. 22/- per sq.mt. by the impugned award, giving rise to the above-numbered appeals.

7. This Court has heard Mr.K.D.Pandya, learned Assistant Government Pleader for the appellants,

and Mr.A.J.Patel, learned Counsel for the claimants, at length and in great detail. This Court has also considered the paper-book supplied by the learned Counsel for the claimants, which includes the oral as well as documentary evidence adduced by the parties before the Reference Court. It is true that the claimants could not made their assertion good that each claimant was earning net income of Rs.35,000/- to Rs.40,000/- per Bigha per year from the sale of agricultural produces. However, that fact is of little relevance, inasmuch as the claimants have not claimed enhanced compensation on yield basis. The record does not indicate that enhanced compensation was claimed by the claimants on the basis of comparable sale instances. The claimants had relied upon two previous awards of the Reference Court in support of their claim for enhanced compensation; one was relating to the lands of village Kariyana, which was produced at Exh.34, whereas another was relating to the lands of village Koth, which was produced at

Exh.35.

8. Exh.35, which is previous award of the Reference Court and is relating to the lands of village Koth, indicates that the lands of village Koth were acquired for the public purpose of construction of canal under the Narmada Project pursuant to publication of notification issued under Section 4(1) of the Act in the official gazette on January 20, 1994. Therein, the Special Land Acquisition Officer had offered compensation to the claimants at the rate of Rs.1.35 ps. per sq.mt. by award dated December 27, 1996. Feeling aggrieved, the claimants had sought references and accordingly, references were made to the District Court, Ahmedabad (Rural), where they were registered as Land Acquisition Case Nos.491 to 514 of 1998. In those cases, on behalf of the claimants, witness Manharlal Rupabhai was examined at Exh.41; whereas on behalf of the acquiring authorities, no witness was examined. In those cases, the claimants had placed reliance on the previous award of the Reference Court

relating to the lands of village Koth itself. On appreciation of evidence adduced by the parties, the Reference Court by judgment and award dated December 10, 2003 awarded additional amount of compensation at the rate of Rs.23.35 ps. per sq.mt for the acquired lands. However, in view of the fact that this is a post-notification award, this Court is of the opinion that the Reference Court was not justified in placing reliance on Exh.35 for the purpose of determining the market value of the lands acquired in the instant case and, therefore, will have to be ignored while determining the market value of the lands acquired in the instant case.

9. Exh.34 indicates that the lands of village Kariyana, Taluka : Dholka, District : Ahmedabad were acquired for the public purpose of construction of canal under Narmada Project pursuant to publication of notification issued under Section 4(1) of the Act in the official gazette on November 13, 1992. Therein, the

Special Land Acquisition Officer by his award dated October 19, 1995 had offered compensation to the claimants at the rate of Rs.0.75 ps. per sq.mt. Feeling aggrieved, the claimants had sought references. Accordingly, references were made to the District Court, Ahmedabad (Rural), where they were registered as Land Acquisition Case Nos.1750 to 1767 of 1996. In those cases, witness Dahyabhai Manibhai was examined at Exh.31 by the claimants in support of their claim for enhanced compensation; whereas on behalf of the acquiring authorities, witness Gautamkumar Manilal Patel was examined at Exh.50. In those cases, previous award of the Reference Court relating to the lands of village Koth was relied upon, and on the basis of the said award, the claimants were awarded additional amount of compensation at the rate of Rs.20.50 ps. per sq.mt. i.e. in all, they were awarded compensation of Rs.21.25 ps. per sq.mt. for their acquired lands. As observed earlier, the assertion made by witness Abhesang, who was

examined on behalf of the claimants, that the lands of village Kariyana were similar in all respects to the lands acquired in the instant case from village Valthera could not be demonstrated to be untrue. It is well settled that previous award of the Reference Court relating to a village, which has attained finality, can be relied upon as a good piece of evidence for the purpose of determining the market value of similar lands acquired from the adjoining village subsequently. During the course of hearing of the appeals, Mr.A.J.Patel, learned Counsel for the claimants, has produced a copy of the judgment delivered by the High Court in First Appeal Nos.2414 to 2431 of 2006 on November 24, 2006, for perusal of the Court. It indicates that the award rendered by the Reference Court in Land Acquisition Case Nos.1750 to 1767of 1996 was confirmed by the High Court. Thus, the previous award of the Reference Court relating to the lands of village Kariyana has attained finality. Under the circumstances, this Court is of the

opinion that the claimants would be entitled to the enhanced compensation on the basis of previous award of the Reference Court as confirmed by the High Court. If that award is taken into consideration, the claimants would be entitled to, in all, compensation at the rate of Rs.22/- per sq.mt. because there is time-gap of about six months between issuance of notifications under Section 4(1) of the Act. However, there is no manner of doubt that the claimants were not entitled to compensation, in all, at the rate of Rs.23.27 ps. per sq.mt. as determined by the Reference Court. Therefore, the appeals will have to be accepted in part.

For the foregoing reasons, all the appeals partly succeed. The judgment and award dated May 6, 2006 rendered by the learned 4th Additional Senior Civil Judge, Ahmedabad (Rural) at Navrangpura, in Land Acquisition Case Nos.295 to 307 of 1996 and 560 of 1998 awarding additional amount of compensation to the claimants at the

rate of Rs.22/- per sq.mt for their acquired lands, over and above the compensation already awarded to them by the Special Land Acquisition Officer at the rate of Rs.1.27 ps. per sq.mt. by his award dated March 31, 1995 is hereby modified and it is held that the claimants, in all, would be entitled to compensation at the rate of Rs.22/- per sq.mt. for their acquired lands. The other statutory benefits which have been granted by the impugned award are not interfered with at all and are hereby upheld. The appeals are allowed to the extent indicated hereinabove. There shall be no orders as to costs. The Registry is directed to draw decree in terms of this judgment immediately.

[J.M.PANCHAL,J.]

[SMT.ABHILASHA KUMARI,J.]

(patel)